ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

Introduction and First Reading

Bill introduced, on motion by **Mr R.R. Whitby (Parliamentary Secretary)**, and read a first time.

Explanatory memorandum presented by the parliamentary secretary.

Second Reading

MR R.R. WHITBY (Baldivis — Parliamentary Secretary) [12.49 pm]: I move —

That the bill be now read a second time.

Western Australia is home to some of the world's most biologically diverse flora and fauna as well as some of the world's most significant natural resources. For this reason, finding a balance between delivering on the full economic potential of our resources and the protection of the environment is vital. The need to ensure that our precious environment is protected for current and future generations and that environmental legislation works efficiently to support a sustainable economy is particularly relevant at a time when we are moving to support recovery from the impact of the COVID-19 pandemic. As Western Australia's primary environmental protection legislation, the Environmental Protection Act 1986 provides the legal framework for the environmental impact assessment of significant proposals and schemes by the Environmental Protection Authority. The act also regulates emissions, discharges and the clearing of native vegetation. The act was introduced almost 30 years ago and has done its job in providing a framework for protecting the environment. It is timely now to ensure that the act is prepared for future challenges and continues to meet the expectations of our community in protecting public health and the environment.

The amendments in the Environmental Protection Amendment Bill deliver a modern Environmental Protection Act. They will create the ability for more efficient, risk-based and flexible assessment and approval processes, expand enforcement powers, support a focus on cumulative impacts and strategic assessment, and increase penalties for environmental offences. The amendments are drawn from reviews and recommendations by expert advisory groups undertaken since the last major amendments by the Gallop government. Consultation on the reforms was supported by release in 2019 of an exposure draft bill, a discussion paper and meetings with stakeholder groups. The consultation process generated 101 submissions and found broad support for the amendments.

A driver for these improvements is to simplify and reduce unnecessary regulatory obligations on industry while maintaining strong environmental protection and standards. This will result in the reduction of costs to both industry and government and benefit business development and job creation.

Submissions from stakeholders have led to substantial changes from the exposure draft bill. These include a new provision on cumulative impacts, the introduction of a power to split or consolidate ministerial statements, an increase to the threshold amount for material harm, clarification that the clearing referral system is an optional process and maintaining the role of the EPA chair to be full time only.

The main areas of reform will —

- improve regulatory processes under part IV to streamline the administrative efficiency of the environmental impact assessment process and reduce duplication of assessments and approvals;
- introduce cost recovery provisions relating to part IV;
- clarify provisions dealing with strategic assessments using terminology consistent with that used in other jurisdictions;
- amend part V, division 2 to ensure the clearing provisions are efficient, targeted, flexible and transparent while ensuring protection of native vegetation with important environmental values;
- amend part V, division 3 to improve the efficiency of regulation of emissions and discharges;
- modernise and improve defences, investigation and enforcement powers, and provide for enhanced modified penalties;
- introduce a new part to provide for environmental protection covenants to which the chief executive officer may enter under conditions made for part IV proposals and part V, division 2 clearing permits;
- provide a new part VIIB that enables regulations to be made for the development of environmental monitoring programs to address cumulative environmental impacts in particular areas or from certain industries and to recover the costs of monitoring;
- facilitate and streamline the implementation of bilateral assessment and approval agreements under the commonwealth Environment Protection and Biodiversity Conservation Act 1999, including fees for cost recovery;
- amend appeal provisions to improve consistency; and

- impose consistent transparency and publication requirements throughout the EP act, providing a head power for a system for the accreditation of environmental practitioners and increasing penalties for certain environmental offences.

I will detail some of these key areas of reform.

Part IV of the EP act provides for the EPA to assess the environmental impacts of proposals and planning schemes, which are likely, if implemented, to have a significant effect on the environment. Regulatory processes for environmental impact assessment have been improved by streamlining processes and reducing duplication of assessments and approvals. Divisions 1 and 2 have been substantially redrafted following feedback from stakeholders that these were difficult to follow and understand. In response to calls from stakeholders for express consideration of cumulative impacts, the EP amendment bill clarifies that the effect of a proposal includes its cumulative impacts. This puts it beyond doubt that the EPA is able to take a regional or strategic approach in undertaking its assessment and making recommendations. Provisions dealing with strategic assessments have been clarified using terminology consistent with that used in other jurisdictions. These amendments will align the EPA's ability to conduct strategic assessments with similar processes used in other jurisdictions.

A number of amendments have been made to clarify referral of proposals and changes to referred proposals. For example, the bill allows a proponent to apply to the EPA to amend a referred proposal before a decision is made on whether it will be assessed. There is currently no explicit power for a referral to be amended, which causes problems where a referral does not accurately capture the proposal. This is particularly relevant for proposals that are referred by a third party or where the proponent has materially changed its plans for the proposal. The streamlining of consultation requirements with other decision-making authorities has also been introduced to reduce unneeded administrative burden. The amendments explicitly authorise the EPA to consider whether the processes of other decision-makers adequately address environmental requirements. In considering these other processes, the EPA must consider the capacity of that authority to achieve the environmental objectives of the EP Act. The bill also allows the EPA to determine which decision-makers it will notify of its decision to assess.

The process for amending a proposal during assessment has been streamlined. If the EPA agrees to a proposed amendment, the EPA shall determine whether the proposed amendment would justify setting a different level of assessment, require further information from the proponent or require further public review. To provide certainty on the types of implementation conditions that may be imposed, a provision will be added to specify these. The types of implementation conditions include the power to enter into covenants and impose offsets, and to make monetary contributions to a fund for counterbalancing the impacts of the proposal. In a similar way to the EPA, the bill provides that the Minister for Environment will be required to only consult and attempt to reach agreement with decision-makers relevant to the proposal and its environmental impacts. A head power has been included to enable cost recovery for environmental impact assessments undertaken through part IV of the act. Regulations will be developed in consultation with stakeholders and all funds collected will only be used for administration of Part IV.

The bill simplifies and improves the provisions for the clearing of native vegetation by focusing on environmental outcomes rather than administrative processes. At present the minister is required to follow the requirements of section 51B each time he or she declares an area to be an environmentally sensitive area. This is inefficient when the only change is an update that adopts the most recent listings made under other legislation. The bill addresses this issue by prescribing environmentally sensitive areas in regulations so that the consultation requirements can be tailored to the nature of the change, rather than needing to follow a prescriptive approach. The current section 51C requires that all clearing of native vegetation must be authorised by a clearing permit or be subject to an exemption. This results in an administratively burdensome process for trivial clearing for which an exemption does not apply, but which may not have a significant effect on the environment.

A new referral system will allow any clearing that is not exempt under the act to be referred to the CEO to determine whether a clearing permit will be required. This will be done having regard to specified criteria set out in the act including the size of the area, known or likely environmental values, scientific knowledge and whether conditions are likely to be required to manage environmental impacts.

Further non-statutory guidance will also be developed to assist in interpreting and applying these criteria. The adoption of this referral-based system will have the effect of ensuring that resources and assessments focus on significant clearing and that regulation is targeted, flexible and transparent while ensuring native vegetation with important environmental values is protected.

Environmental regulation provisions under part V, division 3 have been modernised to improve the efficiency and effectiveness of the regulation of emissions and discharges while at the same time simplifying licensing processes. For example, the bill allows for regulation of prescribed activities rather than prescribed premises. This change focuses the regulatory effort on polluting activities. The requirement for a separate works approval and licence for prescribed premises has been changed and combined to require only a single instrument. This will reduce regulatory burden and allow for a consistent approach to the regulation of prescribed activities

across their life cycle. Licences are no longer restricted to the occupier and can be granted to the person who has the care, control and responsibility for the prescribed activity. The new provisions will also allow an operator of a facility that would be a prescribed activity if it met the threshold to opt in to a licence. This means that even though a licence is not required, a person may choose to obtain one so that if their output increases in the future to over the threshold when a licence is required, they will not be delayed in scaling up their operations by having to apply for a licence. The operator would also be able to rely on the defence offered by a licence in relation to authorised emissions.

Along with the flexibility in relation to who may hold a licence, the amendments expand those people who may be prosecuted for a breach of licence. This includes any person who carries out the prescribed activity and breaches relevant conditions. Persons other than the licence holder can rely on a new defence of reasonable lack of knowledge of the licence. The bill clarifies the position that a licence does not provide a defence in relation to an emission when the emission is not mentioned. For the defence to apply, it must be an authorised emission. To ensure that industry licensing is risk-based and focused on significant emissions, the financial thresholds for material and serious environmental harm have been increased fivefold to $100 000 and $500 000 respectively. The bill also makes amendments for modified penalties, which will apply not only to all tier-2 offences, but also all non-intentional tier-1 offences. Tier-1 offences that do not include an element of criminal negligence or intentional conduct may be more efficiently dealt with through a modified penalty system than by criminal prosecution.

The bill includes a new part that provides for environmental protection covenants as a condition of either a clearing permit or a ministerial statement. The provisions provide that a condition of an approval may require a person to enter into, or arrange for another person to enter into, an environmental protection covenant. This amendment has been broadly supported by stakeholders.

The bill makes improvements to investigatory and enforcement powers, including the use of reasonable force to gain entry, expand an investigators' power to compel attendance at an interview and the production of documents. A new part has been inserted to allow for regulations to recover costs borne by government in implementing environmental monitoring programs. One such example is the Murujuga rock art monitoring program. The head powers will allow for a levy to be imposed on licensed industries that contribute to an environmental effect or impact. Consultation with stakeholders will occur before any regulations are made under this head power. The new power for cost recovery of environmental monitoring programs allows for the pooling of resources to ensure that cumulative impacts on the environment and health can be effectively monitored. Monitoring data and outcomes will be shared and made public, ensuring that industry has access to the best available information to improve environmental outcomes.

The Environmental Protection Act currently imposes a variety of publication or advertising requirements under various provisions of the act. Amendments allow for the use of a wider variety and modern means of publishing, such as the internet. The amendments also allow for the prescription of types of information and documents that may or must be published. A consistent approach to confidentiality and exceptions to publication requirements will be adopted throughout the act. These reforms are supported by all stakeholders.

A new provision will allow regulations to be made regarding the ways moneys received under the act, whether as levy or offset fund contribution, may be accounted for, governed and reported upon to the public. This addresses stakeholder concerns that moneys must be used for their stated purpose.

The bill makes amendments to ensure that the state government has the ability to fully implement bilateral agreements while also removing duplication of the commonwealth's and the state's environmental assessment and approval processes. These amendments were strongly supported by industry groups.

The bill provides for regulations to be made for accreditation of environmental practitioners. This will be a voluntary scheme, designed in consultation with industry, with no power under the act to require the use of an accredited practitioner. A voluntary scheme will support certification of environmental professionals, which assists in the recognition of expertise and promotion of improved standards. This proposal changed as a result of feedback from stakeholders, who were concerned that a mandatory scheme could drive up costs.

This bill represents the most significant reform of Western Australia's environmental legislation since the EP Act came into effect. It will help ensure community expectations for a healthy environment are promoted and achieved. By improving regulatory processes, the amendments will support investment, employment and business creation in the state while supporting the best environmental outcomes.

I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.